

10★Eight

In Service for Arkansas Law Enforcement

Arkansas
Attorney General
Mike Beebe

Volume 12 Number 5

August 2005

DEAR TEN-EIGHT READER:



I look forward to seeing each of you at our 2005 Law Enforcement Summit, which will be held in Little Rock on October 11th of this year. The Summit will again focus on crimes against children, with special emphasis on Internet crimes and missing-child investigations. Details are included in this issue of 10-8.

While combatting all crime is the duty of law enforcement, perhaps the most disturbing of all criminal activities is that which preys on innocent young lives. I urge you to attend our statewide Summit, with training instruction presented by nationally recognized consultants from the Office for Juvenile Justice and Delinquency Prevention and the National Center for Missing and Exploited Children. I hope to see you there.

Sincerely,

Mike Beebe

COMMISSION ON PEOPLE WITH DISABILITIES

INTERPRETS 2003 AMENDMENT TO HANDICAPPED PARKING LAW

By: Ida Esh't, Executive Director, Arkansas Governor's Commission on People with Disabilities

Two years ago, the General Assembly passed Act 1353 of 2003, amending Ark. Code Ann. §27-15-312, a section of the Access to Parking for Persons with Disabilities Act. Section 27-15-312(a) provides that vehicles displaying a special license plate or certificate that is used for the actual transport of a person with disabilities may park in areas designated as such. Act 1353 adds a new paragraph that provides:

Vehicles that load or unload a wheelchair or other related mobility device shall be authorized to load or unload or otherwise use those parking spaces reserved exclusively for persons with disabilities and designated "van accessible."

Thus, Act 1353 limits the use of "Van-Accessible" parking spaces to those with special plates or certificates who are actually using wheelchairs or mobility devices, including three-, four-, and six-wheel scooters. Such parking spaces, often designated "Van-Accessible" and "Van-Only," should have an eight-foot clearance on the right (passenger) side of the vehicle to allow the person using the wheelchair or mobility device enough room to enter or exit the vehicle without requiring assistance.

Act 1353, however, does not specify or define a "mobility device." Some persons may believe that a cane, walker, or crutch qualifies as such a device. Yet a person using one of those items—or simply loading or unloading such an item—does not require an eight-foot clearance, whereas the person using a wheelchair does. For the purposes of this law, it is the position of the Governor's Commission on People with Disabilities that canes, walkers, or crutches do not qualify as mobility devices in regard to "Van-Only" parking. The Commission hopes this guidance will clear up any confusion that Arkansas law-enforcement officers might have in enforcing proper usage of designated parking places for persons with disabilities.

To learn more on this issue or any other issue related to handicapped parking, please contact Ida Esh't, Executive Director, Arkansas Governor's Commission on People with Disabilities, P. O. Box 3781, Little Rock, AR 72203. Phone 501-296-1637 or e-mail ibesh@ars.state.ar.us.

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Police Liability for Executing Warrants without Description of Items to Be Seized

David Raupp, Senior Assistant Attorney General

After learning that the Ramirez home contained several weapons that might be unregistered, including grenade and rocket launchers, ATF Special Agent Groh applied for a warrant to search the home for such items. While his affidavit supporting the application particularly described the items that he intended to search for and seize, the warrant itself did not. Indeed, in the blank on the warrant form for listing the items, he had listed only the description and location of the Ramirez home. The warrant made no cross reference to the supporting affidavit, and the application for the warrant was sealed. Nevertheless, a magistrate judge signed the warrant, and Groh and others executed it.

The search uncovered nothing at the Ramirez home, and no charges were ever filed. The Ramirezes, however, sued Groh and others for violating their Fourth-Amendment rights. The federal district court hearing the case granted summary judgment to Groh and all defendants, but, on appeal, the Ninth Circuit concluded that Groh was not entitled to summary judgment on the Ramirezes' Fourth-Amendment claim. Groh sought review in the United States Supreme Court, which upheld the Ninth Circuit's decision in February of last year in *Groh v. Ramirez*.

The Supreme Court answered two questions adversely to Groh. First, it held that the search violated the Fourth Amendment because the warrant contained no description of the things to be seized. The Amendment, by its very text, requires that a warrant "particularly describ[e] ... the persons or things to be seized." Because the warrant here did not incorporate by reference any other document

describing the items to be seized, such as the application by Groh, the Court did not answer whether such a reference would satisfy the Fourth Amendment's particularity requirement. The Court acknowledged that most lower federal appellate courts have concluded that such incorporation satisfies the requirement, provided the supporting document accompanies a warrant; the Arkansas appellate courts have reached the same conclusion. The Supreme Court also rejected Groh's claim that the particularity requirement was satisfied because, at the time of the search, he described to Mrs. Ramirez what he was searching for. The Court noted that relying on what officers said on the scene would not ensure that a magistrate approved the scope of a search beforehand and, in any event, that there was a dispute as to what he told her that prevented the Court from reaching the question.

Second, the Court concluded that Groh was not entitled to qualified immunity under *United States v. Leon*, despite the magistrate's approval of the inadequate warrant. Given that the particularity requirement is found in the text of the Fourth Amendment itself, the Court concluded that no reasonable officer could rely on a warrant that contained no description of the things to be searched and seized, particularly not the officer who prepared the application and warrant form.

The lesson is that warrant requirements under federal and state law must be carefully observed, especially when using preprinted forms. If not, evidence can be suppressed, and officers can be liable for damages in civil lawsuits.

ATTENTION PROPERTY OFFICERS, EVIDENCE CUSTODIANS, AND MAINTENANCE SUPERVISORS!

The International Association for Property and Evidence, Inc. is presenting a Property Room Management Training Seminar on October 10-11, 2005. This event is being sponsored by the Arkansas State Crime Laboratory, #3 Natural Resource Drive, Little Rock, Arkansas 72215.

For more information, call 1-800-449-IAPE or visit their Web site at www.iape.org.

LAW ENFORCEMENT

SUMMIT

HOSTED BY ATTORNEY GENERAL MIKE BEEBE

Arkansas Attorney General Mike Beebe is hosting a one-day statewide Law Enforcement Summit on Tuesday, October 11, 2005. The Summit will be held at the Clear Channel Metroplex Event Center, located at 10800 Colonel Glenn Road in Little Rock. The focus of this Summit is Crimes against Children, with special emphasis on Internet crimes and missing-child investigations. As part of the Summit, Attorney General Beebe will present awards honoring law-enforcement officers who have shown extraordinary valor in the line of duty.

The Summit is open to all law-enforcement officials, prosecuting attorneys, and criminal-justice personnel. The registration fee is \$25 per person. Training materials, lunch, and morning refreshments are included in the fee. Registration will begin at 7:45 a.m. and the Summit will conclude at 4:30 p.m.

The training will be conducted by nationally recognized consultants from the Office for Juvenile Justice and Delinquency Prevention and the National Center for Missing and Exploited Children. Course credit has been applied for through the Arkansas Law Enforcement Training Academy and the Arkansas Bar Association.

Individuals who would like to register for this training opportunity must complete and return the form below by Friday, September 30, 2005. Make checks payable to the Office of the Attorney General. Registrants will receive confirmation forms containing more specific details closer to the event. Seating is limited and will be filled upon receipt of registration forms. If you have questions, call 1-800-448-3014 or (501)682-1020.

REGISTRATION FORM

Name and Rank _____

Agency _____

Mailing Address _____

Phone/Fax/E-mail _____

Registration Fee--\$25 **Registration Deadline**—Friday, September 30, 2005 Checks Payable to Office of the Attorney General; Attention:
Community Relations Division; 323 Center Street, Suite 1100; Little Rock, AR 72201 **Phone:** 1-800-448-3014 or (501)682-1020 **Fax:** (501)682-6704

2005 ACTS OF PARTICULAR INTEREST TO LAW ENFORCEMENT

By: Laura Shue, Assistant Attorney General

(CONTINUED from March 2005 10-8 Newsletter, p. 2) Acts without specified effective date became effective on August 12, 2005.

NOTEAct 1994-Revises numerous criminal-code sections, pursuant to the Ark. Criminal Code Revision Commission's recommendations. It is 455 pages of technical corrections, repealed statutes, and various substantive changes. Sections 301-314 reorganized the controlled-substance statutes in Chapter 64 of Title 5. Please contact the Attorney General's Criminal Department for further information.**

Act 167-State Capitol Police officers shall have the authority to act in their official capacities and exercise their powers anywhere in Arkansas.

Act 168-Creates a Class B felony offense prohibiting the furnishing of a cell phone or other communication device that would facilitate an escape, continuing criminal enterprise, or violence in a correctional facility, State Hospital, or juvenile training school.

Act 197-Clarifies that a terroristic act may be committed against a sole occupant of a vehicle or other structure.

Act 247-Creates a Class B misdemeanor for unauthorized entry of a school bus.

Act 255-Requires reports of adult maltreatment be made within 24 hours or the next business day. Failure to report is a Class C misdemeanor.

Act 256-Restricts dispensing of ephedrine-combination products, pseudoephedrine, and phenylpropanolamine (PPA), as Schedule V controlled substances in pharmacies, not including rule-exempt products, liquid, liquid capsules, or gel capsule forms of ephedrine or pseudoephedrine, or prescribed products. Restriction does not apply to retail distributor sales for personal use of exempt or liquid or gel products. Requires pharmacy to have purchaser produce valid ID and sign a log or receipt. Thirty-day purchase limit for 5 g of ephedrine or 9 g of pseudoephedrine or PPA. (EFFECTIVE: March 24, 2005)

Act 272-Gives adjoining states' certified law-enforcement officers the same authority as in-state officers under certain conditions. (EFFECTIVE: February 24, 2005)

Act 423-Authorizes electronic monitoring and weekend jail for all county jails. Law enforcement may cancel any sentence agreement and place offender in jail for failure to comply with conditions.

Act 744-Creates the Identity Theft Passport Program, operated by the Attorney General's office. Requires the taking of a police report by local law enforcement, but provides that the report is not required to be part of agency's statistics.

Act 889-Allows court to issue an order that allows law enforcement to use or sell weapons seized in cases of certain felonies involving a deadly weapon.

Act 1004-In negligent-homicide cases, the method of analysis of a person's blood, urine, or breath and evidence in prosecution are the same as in a DWI.

Act 1018-Includes the use of a scanning device or re-encoder in the offense of financial identity fraud, known as "skimming."

Act 1170-Amends Alcohol Beverage Control statutes to allow certain non-profits/charities to run casino games, one per year, for amusement purposes.

Act 1233-An address with a P.O. Box is sufficient to obtain a new driver's license if licensee is a domestic-violence victim or dependent of a victim, if victim presents order of protection or affidavit.

Act 1252-Municipal police records may be destroyed seven years after closure of the case file. Must comply with A.C.A. § 12-12-104 and records related to crimes of violence must be maintained permanently.

Act 1266-Creates new explosive-materials and destructive-devices offenses.

Act 1419-Prohibits the use of the data recorded by an event-data recorder in a motor vehicle without written permission of the vehicle owner. Vehicle "black-box" privacy does allow certain public health and welfare exceptions for court orders, law enforcement, firefighters, EMTs, and Arkansas HTD.

Act 1442-Classifies theft of anhydrous ammonia as a Class B felony.

Act 1458-Creates offense of underage motorboat operation while intoxicated.

Act 1461-Increases time to test for intoxication in operation of motorboats from two hours to four hours.

Act 1529-Expands the offense of arson to include fires or explosions caused in the course of and in furtherance of a felony.

Act 1535-Administrative driver's license suspension for minor under 21 in possession of alcohol. Minor must surrender license at time of arrest.

Act 1568-Prohibits use of nitrous oxide to increase speed in vehicles on public streets or highways. Other than in certain exceptions, driving a vehicle that uses nitrous oxide is a Class C misdemeanor.

Act 1642-Creates the Class A misdemeanor offense of voyeurism. It is a Class D felony if committed against a victim younger than 17 years of age and the offender holds a position of trust over victim.

Act 1675-Law-enforcement officers may use a citation form that is substantially equivalent to the form prescribed by the ASP. (EFFECTIVE: April 5, 2005)

Act 1676-Expands definition of residence of an order-of-protection petitioner to include a county where the petitioner is located for a short-term stay in a domestic-violence shelter.

Act 1683-Interference with emergency medical personnel in the performance of a rescue mission is a Class C misdemeanor.

Act 1767-Enhances penalty for knowingly furnishing or selling alcohol to minor. First offense is a Class A misdemeanor, second offense is a Class D felony. Increases penalties if under-21 driver causes an accident and property damage exceeds \$500, or if death results.

Act 1779-Creates a Class D felony offense for a Level 3 or 4 sex offender to work with children under 16 years of age.

Act 1815-Removes the enhanced-penalty provision for indecent exposure.

Act 1825-Requires school-bus operators to report drivers who pass the bus when stopped. Written report must be delivered to the superintendent within 24 hours.

Act 1845-Prohibits a state employee from retaining witness or mileage fees when subpoenaed as a witness for a matter within the scope of employment.

Act 1870-Unlawful taking of a minor while custodian and minor are housed at a domestic-abuse shelter is a Class D felony interference with custody.

Act 1873-State and local law enforcement must electronically file DEA EPIC report with ACIC within ten days of seizure of drug paraphernalia, drug precursors, or a lab that can manufacture a controlled substance. Failure may affect funds.

Act 1875-Present-or-past dating relationships are included as "family or household member" for obtaining an order of protection or for domestic-abuse offenses.

Act 1886-Permits motorcycles to disregard certain red lights. If light is controlled by sensor that failed to detect a motorcycle because of size and weight, operator must stop, then may use caution and proceed.

Act 1932-Prohibits using the audiovisual-recording function of any device in a motion-picture theater without the consent of the theater owner or lessee. An officer may arrest a person without a warrant upon probable cause of committing motion-picture piracy.

Act 1942-Prohibits a child less than eight years of age from riding a motorcycle on a street or highway.

Act 1966-Allows alcoholic-beverage seller to detain a person under 21 attempting to buy alcohol. The detention must be "in a reasonable manner and for a reasonable length of time" in order that the seller may call law enforcement. An officer may arrest without a warrant upon probable-cause attempt to buy or use a fake ID to buy alcohol.

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CARS WITHOUT INSURANCE

By: Clay Hodges, Assistant Attorney General

CANNOT BE IMPOUNDED

In the recent case of *State v. Kelley*, the Arkansas Supreme Court held that a law-enforcement officer cannot impound a vehicle when the driver is unable to show proof that the vehicle is insured, as required by Ark. Code Ann. § 27-22-104. The case arose when two Little Rock patrol officers saw Kelley's car run a stop sign. The officers followed the car while they awaited the return of a license check. Kelley eventually pulled into a convenience store and, when he came out of the store, the officers approached, explained that they had seen him run a stop sign, and asked to see a driver's license, vehicle registration, and insurance. The license and registration were in good order, but Kelley's insurance card showed that the policy had lapsed.

At that point, pursuant to department policy and an order from the Little Rock District Court requiring that vehicles be impounded if the drivers cannot show proof of insurance, the officers impounded the vehicle and conducted an inventory search, during which drugs and other contraband were found. Kelley subsequently was charged with various drug-related offenses, and he moved to suppress the evidence, a motion that the trial court granted.

On an interlocutory appeal by the State, the Arkansas Supreme Court affirmed. It adopted the reasoning of an earlier decision by the Arkansas Court of Appeals in interpreting Ark. Code Ann. § 27-22-104 to hold that, when a vehicle does not appear to have sufficient proof of insurance coverage, a law-enforcement officer may seize only the license plate and issue a temporary plate. Thereafter, the motorist has ten days to show proof of insurance to the Department of Finance and Administration, or the vehicle's registration will be suspended. The Court reasoned that the statute, which requires a temporary plate be issued, strongly suggests the legislature's intent for the offending motorist to keep his or her vehicle while having ten days to present proper proof of coverage.

In making this ruling, the Court rejected the State's argument that the statute does not expressly forbid seizing the vehicle if it is the department's policy to do so and that, irrespective of a departmental policy, the officers were obligated by court order to seize the car or possibly be held in contempt of court. The Court stated that the Arkansas Court of Appeals already had ruled to the contrary, that law-enforcement officers (and particularly judges) were presumed to know the law, that ignorance of the law is not an excuse, and that the officers could not have relied in good faith on the court order requiring impoundment.

Pursuant to *Kelley*, therefore, it is now clear that a law-enforcement officer cannot impound a vehicle merely because the driver cannot show proof of liability insurance. Rather, all the officer may do is seize the license plate and issue a temporary plate in its place. Any departmental policy or standing order—by a traffic court, district court, or circuit court—to the contrary is void, and evidence obtained from an inventory search following an unlawful impoundment will likely be suppressed.

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Act 1983-Implied consent to intoxication test "if the person is involved in a shooting accident while hunting." Refusal is a violation with a fine and suspension or revocation of hunting privileges.

Act 2128-Issac's Law. Amends offense of negligent homicide to add "negligently causes a death as a result of operating a vehicle while passing a stopped school bus." When a school bus stops and displays alternating lights to load or unload, every driver "meeting or overtaking the school bus" from any direction must stop before reaching the bus.

Act 2136-Resumes the efforts of the Task Force on Racial Profiling and provides that the ASP may implement a public-service campaign. Each law-enforcement agency shall include a copy of its policy in the annual report that the agency submits to Legislative Audit. The Law Enforcement Standard and Training Commission shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

Act 2158-Establishes a \$10.00 fee for each copy of a motor-vehicle-accident report and a \$1.50 fee for each copy of a supplemental report.

Act 2226-Regulates possession of "lions, tigers, and bears." An owner of a large carnivore files an application to receive a permit for personal possession with the county sheriff's department of the county where the large animal is kept. Forms are provided by the sheriff's department, copies of which are provided to Game and Fish Commission.

Act 2245-Amends civil asset-forfeiture property disposition, to add that, in addition to the circuit court permitting property retention by law enforcement or a property sale, it may order a transfer of a motor vehicle to a school district for use in driver-education courses.

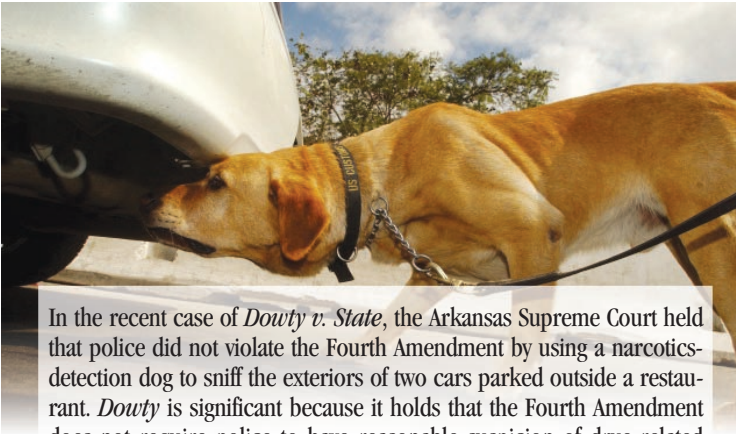
Act 2246-Failure to present proof of liability coverage when requested shall only be punished by a fine of \$25 if a vehicle operator proves that the required coverage was in effect at the time of a traffic stop.

Act 2267-Creates an offense of trafficking in persons.

USING NARCOTICS DETECTION DOGS

TO SNIFF EXTERIORS OF CARS PARKED IN PUBLIC PLACES

By: Lauren Heil, Assistant Attorney General



In the recent case of *Dowty v. State*, the Arkansas Supreme Court held that police did not violate the Fourth Amendment by using a narcotics-detection dog to sniff the exteriors of two cars parked outside a restaurant. *Dowty* is significant because it holds that the Fourth Amendment does not require police to have reasonable suspicion of drug-related offenses before using narcotics-detection dogs to sniff the exteriors of cars parked in public places.

On March 16, 2004, Craighead County Sheriff's Deputy Wes Baxter saw Alvis Dowty driving a black Suburban and April Thorn driving a black Grand Am that bore a green "Enterprise" sticker. Deputy Baxter had information that Dowty had been manufacturing methamphetamine in Tennessee and using his Suburban and rental cars to bring the finished product to Jonesboro.

Investigator Jerry Roth followed Dowty and Thorn after Deputy Baxter advised him of their location. He saw them park their cars beside each

other in the parking lot of a Western Sizzlin' restaurant and walk inside, and he contacted Deputy Brett Duncan, asking him to bring his narcotics-sniffing dog, "Raid," to the parking lot. Raid did not alert when he first sniffed Dowty's Suburban, but he alerted immediately at the passenger's side of the Grand Am.

Investigator Roth and Deputy Duncan approached Dowty and Thorn after they left the restaurant, and Duncan advised Thorn of the dog's alert and stated that he wanted to conduct a search of her vehicle. He discovered methamphetamine in the Grand Am and arrested Thorn. While Investigator Roth advised Dowty that the officers had found drugs in Thorn's car, Deputy Duncan retrieved Raid to complete the canine sniff of the Suburban. Raid alerted at the front passenger-side door, and a subsequent search revealed methamphetamine, a defaced handgun, digital scales, and other drug paraphernalia on the driver's side of the Suburban.

The Arkansas Supreme Court rejected Dowty's argument that those items should be suppressed because the police did not have reasonable suspicion of a drug-related offense before using Raid to sniff the exteriors of the Suburban and the Grand Am. Although the Court concluded that the police had reasonable suspicion to detain Dowty, it held that none was required for the canine sniff because it was not a search under the Fourth Amendment and had occurred in a public place. The Court did not reach the issue of whether a canine sniff is a search under the Arkansas Constitution, and, therefore, even after *Dowty*, the question remains open as to whether Article 2, § 15 of the State Constitution requires reasonable suspicion in these circumstances.



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